

STATE OF MICHIGAN
COURT OF APPEALS

JONNA REALTY VENTURES, INC.,

Plaintiff- Appellee,

and

JONNA CONSTRUCTION COMPANY,

Plaintiff/Counterdefendant- Appellee,

v

JAY M. KOGAN,

Defendant,

and

BLOOM-WOOD CENTRE LIMITED
PARTNERSHIP,

Defendant- Appellant,

and

BLOOM-WOOD CENTRE LIMITED
PARTNERSHIP, d/b/a BLOOMFIELD CENTRE
NORTH,

Defendant,

and

BLOOMFIELD POND ESTATES LIMITED
PARTNERSHIP,

UNPUBLISHED
November 9, 1999

No. 213974
Oakland Circuit Court
LC No. 96-523900 CK

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant Bloom-Wood Centre Limited Partnership (Bloom-Wood) appeals as of right from the judgment of the trial court confirming an arbitration award ordering it to pay plaintiff Jonna Realty Ventures, Inc. (Jonna) \$920,000 on Jonna's breach of contract claim. We affirm.

On December 20, 1991, Jonna Realty, as managing partner on behalf of Bloomfield Centre,¹ entered into an agreement to sell three parcels of land in Oakland County to defendant Jay M. Kogan.² On August 27, 1992, Jonna Realty entered into a "management contract" with Bloom-Wood, whereby Bloom-Wood appointed Jonna Realty to act as the manager of an office building to be constructed on one of the three parcels Kogan had purchased from Bloomfield Centre. In return for Jonna Realty's management services, Bloom-Wood was to pay a management fee equal to four percent of the gross revenues of the building per month. The management contract contained the following provision:

[Jonna Realty] shall have a non-exclusive leasing brokerage agreement with [Bloom-Wood] pursuant to this Paragraph 8. . . . [Jonna Realty] shall work with all brokers in regards to leasing and paying commissions as warranted, provided that [Bloom-Wood] has given its prior written approval of such commissions. [Jonna Realty] shall have the right to pre-register prospective tenants with the real estate broker with the expectation that if any prospect pre-registered by [Jonna Realty] with the real estate broker leases space in the Building, [Jonna Realty] will receive the full leasing commission in respect of that Tenant. [Bloom-Wood] shall pay to [Jonna Realty], in the event [Jonna Realty] performs leasing services hereunder, commercially reasonable leasing commissions excluding re-leasing of space to existing tenants. . . .

Plaintiffs' several claims against defendants included a claim against Bloom-Wood for the breach of the August 27, 1992, management contract. Plaintiffs attached the management contract to the complaint and sought "sums due pursuant to the contract." After approximately eighteen months of discovery, plaintiffs and Bloom-Wood stipulated to entry of the following order submitting plaintiffs' claims to binding arbitration:³

It is hereby ordered that [Jonna Realty, Jonna Construction Company, Bloom-Wood, and Bloom-Wood Centre Limited Partnership d/b/a Bloomfield Centre North] are hereby ordered to commence a binding arbitration of their claims pursuant to Michigan statutes and for the purpose of entering a judgment confirming said arbitration award.

It is further ordered that the arbitration shall be conducted under the Rules of the American Arbitration Association, although the arbitration shall be conducted by three (3) arbitrators. . . .

It is further ordered that a majority of the arbitrators' opinions shall be sufficient to produce a binding award.

Following several days of hearings, the arbitration panel submitted the following award: . . . The arbitrators received and considered the trial briefs submitted by counsel. Having considered the evidence and the arguments, the arbitrators award Nine Hundred Twenty Thousand (\$920,000.00) Dollars to Jonna Realty Ventures, Inc. against Bloom-Wood Centre Limited Partnership, which includes interest through the date of this award.

All other claims presented to the arbitrators are dismissed with prejudice.

Bloom-Wood filed an application asking the trial court to modify or vacate the arbitration award pursuant to MCR 3.602(J) and (K), arguing that the arbitration panel exceeded its powers by including in its damage award \$577,782 in leasing commissions. Bloom-Wood contended that plaintiffs' complaint did not include a claim for leasing commissions pursuant to the management contract, and that, in any event, Jonna Realty was not entitled to such an award. The trial court denied Bloom-Wood's motion and entered a judgment confirming the arbitration award.⁴

On appeal, Bloom-Wood argues that the trial court erred in confirming the arbitration award, because the arbitrators exceeded their powers by deciding a claim that was outside the scope of the parties' arbitration agreement and by awarding damages for leasing commissions in contravention of controlling law.

Because the arbitration order in this case provides for the entry of a judgment confirming the award, judicial enforcement of the arbitration award is governed by Michigan's statutory arbitration act, MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.* *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991); *DAIIE v Gavin*, 416 Mich 407,417; 331 NW2d 418 (1982); *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 578; 552 NW2d 181 (1996).

When a party alleges that arbitrators have exceeded the scope of their authority, the reviewing court's ability to review an award is restricted to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record. *Gavin, supra* at 443; *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175-176; 550 NW2d 608 (1996). Arbitrators have exceeded their authority if they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law. *Id.*

When an arbitration award is challenged, a circuit court has three options. It may (1) confirm the award, (2) vacate the award if obtained through fraud, duress, or other undue means, or (3) modify the award or correct errors that are apparent on the face of the award. MCR 3.602; *Konal v Forlini*, 235 Mich App 69, 74; 596 NW2d 630 (1999). A court may not vacate an award unless (a) the award was procured by corruption, fraud, or other undue means; (b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights; (c) the arbitrator exceeded his or her powers; or (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights. MCR 3.602(J)(1). The fact that the relief could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award. *Id.*

The court's power to modify, or correct an arbitration award is also very limited, and permitted only in certain circumstances:

On application made within 21 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if:

(a) there is an evident miscalculation of figures or an evident mistake in the description of a person, a thing, or property referred to in the award;

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted; or

(c) the award is imperfect in a matter of form, not affecting the merits of the controversy [MCR 3.602(K)(1)].

Bloom-Wood first argues that the arbitrators in this case exceeded their powers by deciding an issue which had not been submitted to arbitration. Bloom-Wood contends that, because plaintiffs made no claim for leasing commissions in their complaint, the arbitrators exceeded the scope of their authority by awarding Jonna Realty damages which included leasing commissions. We disagree and find that the arbitration panel properly considered Jonna Realty's claim for damages, including leasing commissions, pursuant to the parties' management contract.

Plaintiffs' complaint included the following allegations:

19. That pursuant to [the parties' management contract], Plaintiff, Jonna Realty Ventures, located two major anchor tenants for the office parcel.

20. That subsequent to the location of the two tenants, Defendant breached the management agreement by failing to allow Plaintiff to manage the said building and to pay Plaintiff, Jonna Realty Ventures, sums due pursuant to the contract.

It is clear from these allegations that plaintiffs were seeking damages related to Jonna Realty's procurement of "two major anchor tenants" for Bloom-Wood's office building. Plaintiffs also attached

the management contract to its complaint, thus incorporating the contract provisions into its allegations. The contract provided for a “non-exclusive leasing brokerage agreement” and for the payment of leasing commissions to Jonna Realty in certain circumstances. The allegations in the complaint, read in its entirety, were sufficient to notify defendants of plaintiffs’ claim for leasing commissions pursuant to the contract. MCR 2.111(B)(1).

Arbitrators exceed their powers whenever they act beyond the material terms of the contract from which they draw their authority. *Gordon Sel-Way*, *supra* at 496; *Dohanyos*, *supra* at 176-177. In the instant case, the arbitrators did not act beyond the material terms of the arbitration order. Because the order broadly provided for the “binding arbitration of [the parties’] *claims*,” the arbitrators were empowered to resolve all claims arising out of the management contract or its breach. *Gordon Sel-Way*, *supra* at 497-498.

The additional arguments raised by Bloom-Wood on appeal concern the merits of plaintiffs’ breach of contract claim. However, a general principle of arbitration precludes courts from upsetting an award for reasons that concern the merits of the claim. *Gordon Sel-Way*, *supra* at 500; *Dohanyos*, *supra* at 177. Courts may not engage in contract interpretation, which is a question for the arbitrator. *Konal*, *supra* at 74. Nor may this Court review a claim that an arbitrator made a factual error, *id.* at 75. Rather, “[i]t is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable.” *Gavin*, *supra* at 429.

In the instant case, no legal error “clearly appears on the face of the award.” *Gavin*, *supra* at 443. The award simply provides that, “[h]aving considered the evidence and the arguments, the arbitrators award Nine Hundred Twenty Thousand (\$920,000.00) Dollars to Jonna Realty Ventures, Inc., against Bloom-Wood Centre Limited Partnership, which includes interest through the date of this award.” There is no record of the arbitration proceedings, nor any separate record of the arbitrators’ findings of fact or conclusions of law. See *Dohanyos*, *supra* at 177. As the trial court noted, “[d]efendant’s allegation[s] of legal error are of the kind that would require speculation as to what caused the arbitrators to rule as they did. It is only legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable.” Because no error is apparent from the face of the award, the trial court did not err in denying Bloom-Wood’s motion to vacate or modify the award pursuant to MCR 3.602(J)(1)(c) or (K)(1)(b). *Dohanyos*, *supra* at 177.

Affirmed.

/s/ Peter D. O’Connell

/s/ Michael J. Talbot

/s/ Brian K. Zahra

¹ Bloomfield Centre is not a party to this lawsuit and is unrelated to defendant Bloom-Wood, d/b/a Bloomfield Centre North.

² Under the terms of the agreement, Kogan was contracting “not individually but on behalf of an entity (or entities) to be formed.”

³ Plaintiffs and defendants Kogan and Bloomfield Ponds Estates Limited Partnership had earlier accepted the evaluation of a mediation panel disposing of Bloomfield Ponds' counterclaim against Jonna Construction, Inc., and dismissing all of the claims against Kogan and Bloomfield Ponds. Accordingly, the only parties to the arbitration proceedings were plaintiffs, defendant Bloom-Wood, and defendant Bloom-Wood Centre Limited Partnership, d/b/a Bloomfield Centre North.

⁴ Bloom-Wood's motion to the arbitration panel to amend the award was also denied.